IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWELFTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

W.P.Nos.15338 of 2000, 13542 of 2003

and W.P.No.933 of 1999

-

-

-

WRIT PETITION NO : 15338 of 2000

Between:

E.Tyagaraju S/o. Venkateswara Rao.
A.P.Social Welfare Residential Education Society, Golugonda Mandal,
Visakhapatnam District.

..... PETITIONER

AND

1. The Secretary, A.P.Social Welfare Residential

Educational Institutions Society, Hyderabad.

2. The Principal, APSWR School/Jr. College,

Golugonda Mandal, Visakhapatnam District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, order or direction, more particularly one in the nature of Writ of Certiorari, calling for the records relating to the issuance of proceedings

R.C.No. Z-1/3982/99, dt. .01.99 by the 1st respondent and quash the same as arbitrary, illegal, unjust, against principle of Natural Justice, violative of the Fundamental Rights guaranteed to the petitioner under Articles 14, 16 & 21 of the Constitution of India and also violative of the judgment reported in 2000(2) Supreme, i,e.,, Nar Singh Pal Vs. Union of India & Ors.,, and consequently direct the respondent to reinstate the petitioner into service with all consequential and attendant benefits.

Counsel for the Petitioner: DR.P.B.VIJAY KUMAR

Counsel for the Respondents: MR.MOOLA VIJAYA BHASKAR (SC for APSWREI),

-

WRIT PETITION NO : 13542 of 2003

Between:

Etikala Tyagaraju, S/o Sri E.Venkateswara Rao,

Aged: 36 years, Occ:Ex-Health Supervisor,

APSWREIS, R/o State Bank Colony,

Yelamanchili- 531 055.

..... PETITIONER

AND

1 The Secretary,

A.P. Social Welfare Residential

Educational Institutions Society,

Masab Tank, Hyderabad.

2 The Principal,

APSWR School/Junior College,

Golugonda, Visakhapatnam District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction more particularly one in the nature of Writ of Mandamus by declaring that the termination orders issued by the first respondent vide Procds. Rc.No.Z-I/3982/99 dated 27-01-1999, is not based on any enquiry, violative of Article 311 (2) of the Constitution of India, principles of natural

justice, arbitrary and without reference to the acquittal orders dated 21-01-2003 passed by the learned Additional Judicial First Class Magistrate, Yelamanchili and therefore liable to be set-aside and consequently direct the respondent No.1 to reinstate the petitioner as Health Supervisor.

Counsel for the Petitioner: MR.K.V.SIMHADRI

Counsel for the Respondents: MR.MOOLA VIJAYA BHASKAR (SC for APSWREI)

AND

WRIT PETITION NO : 933 of 1999

Between:

Etikala Thyagaraju, S/o Venkateswara Rao,
A.P Social Welfare Residential Jr.College, Golugonda, Vishakapatnam Dist.,
R/o Somalingampalem (V), Madhuranagar, Yellamanchili, Vishakapatnam.

..... PETITIONER

AND

1 Principal, AP Social Welfare Residential School/Junior College Golugonda.
2 AP Social Welfare Residential Educational Institutions Society, Rep by its

Secretary, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or direction, particularly one in the nature of WRIT OF MANDAMUS declaring the proceedings order R.C.No.71/98 Al dt.24.12.98 passed by the respondent No.1 i.e. the Principal, Andhra Pradesh Social Welfare Residential School/Jr. College, Golconda is illegal, arbitrary and by nullifying the same direct the respondent herein to reinstate the petitioner into service of the AP Social Welfare Residential School/Jr. College, Golconda.

Counsel for the Petitioner: DR.P.B.VIJAY KUMAR

Counsel for the Respondents: MR.MOOLA VIJAYA BHASKAR (SC for APSWREI)

The Court made the following :

COMMON ORDER:

Since the issue involved in these writ petitions is relating to the suspension, termination and acquittal in the criminal case of the sole writ petitioner, they are being disposed of by a common order.

2. The petitioner was placed under suspension by an order of the Principal, APSWR School/Junior College, Golugonda, in R.C.No.71/98-A1 dated 24-12-1998 on the ground that petitioner was detained in custody for more than 48 hours, as per the Report Dated 18-12-1998 of Sub-Inspector of Police, Yellamanchili. Challenging the same, W.P.No.933 of 1999 is filed. Thereafter, the said detention amounts to misconduct and the services of the petitioner were terminated on 27-01-1999. Challenging the same, W.P.No.15338 of 2000 is filed. On completion of investigation, Sub-Inspector of Police, Yellamanchili, filed the charge-sheet against the petitioner in C.C.No.64 of 1999. After completion of trial, petitioner was found not

guilty of the charge under Section 498-A of the I.P.C. by the Additional Judicial First Class Magistrate, Yellamanchili, and accordingly petitioner was acquitted under Section 248(1) Cr.P.C. After acquittal in the said C.C. on 21-01-2003, petitioner filed representation dated 22-02-2003 to the Secretary, APSWRI Society, Hyderabad, to consider his case for reinstatement. As no action has been taken by the Secretary on the said representation, he filed the W.P.No.13542 of 2003.

3. The factual matrix is not in dispute.

4. The learned counsel for the petitioner contended that no fault of writ petitioner he was terminated without conducting any enquiry and it is against the decision of the Apex Court in NAR SINGH PAL vs. UNION OF INDIAand therefore he prays to set-aside the same.

5. On the other hand, the learned standing counsel for the APSWREI appearing for respondents, contended that the petitioner was purely appointed on temporary basis that too on contract for a period of one year and since the contract period was expired, the question of engaging him does not arise. He further contended that before starting of the academic year, the Health Supervisors will be taken and as some persons were already appointed, the question of taking the petitioner at this point of time may not arise and hence he prays to dismiss the writ petitions.

6. It is not disputed before this Court that petitioner was detained in the judicial custody by virtue of case registered against him by the police on the complaint given by his wife and he was in the custody for more than 48 hours i.e., from 11-12-1998 to 14-12-1998. As the petitioner was detained in the custody for more than 48 hours, he was placed under suspension by the Principal, APSWR school/Junior College, Golugonda, and thereafter his services were terminated on 27-01-1999 by the Secretary, APSWREI Society, Hyderabad, invoking the clause 9 (iii) of the contract agreement rendered between the parties.

Clause 9 (iii) reads as follows:

> "The Society of the FIRST PART or its officers having proper authority shall terminate the services of the part of the SECOND PART without any previous notice, if found to be prima-facie guilty of any in-subordination, intemperance, moral turpitude or other misconduct or of any breach or non-performance of any of the provisions of these conditions, or if otherwise found unsuitable for the efficient performance of his/her duties".

7. The misconduct alleged against the petitioner is nothing to do with discharge of his official duties. It does not amount to moral turpitude or any in-subordination. On the complaint given by his wife, the Police registered a case and arrested him. The conduct and behaviour of the writ petitioner is nothing to do with the discharge of his official duties as Health Supervisor. Therefore, Clause 9 (iii) of the agreement entered into between the parties does not have any bearing or relevancy for termination order. Therefore, in my considered opinion, the termination order dated 27-01-1999 is bad in law and accordingly it is set-aside.

8. However, the services of the petitioner are being utilized by the respondents on a contractual basis from year to year. The original contract period was ended by the academic year 1998-1999. Whatever may be the reason, the petitioner is not continuing on contract basis with the respondents from the year 1999 onwards. Therefore, the services of other persons are being utilized by the respondents as Health Supervisors.

9. Admittedly, after the charge-sheet was filed, the trial went on and the petitioner was acquitted on 21-01-2003 in C.C.No.64 of 1999 on the file of the Additional Judicial First Class Magistrate, Yelamanchili. Thereafter, the petitioner made a representation on 22-02-2003 to the Secretary, APSWRI Society, Hyderabad, for taking appropriate decision.

10. Having regard to the facts and circumstances of the case, W.P.No.15338 of 2000 and W.P.No.13542 of 2003 are disposed of directing the first respondent to consider the representation dated 22-02-2003 filed by the petitioner in appointing him in this academic year and pass appropriate orders depending upon the work load and availability of the posts, within a period of one month from the date of receipt of a copy of this order.

11. Since the termination order has also been passed, no finding need be given in W.P.No.933 of 1999. Accordingly, W.P.No.933 of 1999 is dismissed. No order as to costs in all the three matters.

_____

K.C.BHANU, J.

Dated 12-07-2005.

SKMR

..... REGISTRAR

-

-

-

Copy to:

-

1 The Secretary, A.P. Social Welfare Residential Educational Institution

Society, Hyderabad.

2 The Principal, A.P.S.W.R.School/Jr.College,.
Golugonda Mandal, Visakhapatnam District.

2 CD copies.